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State of Nevada*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

17 STATE OF NEVADA,  
18 Plaintiff,  
19 vs.  
20 OPTUM, INC.; OPTUMRX, INC.;  
21 OPTUMINSIGHT LIFE SCIENCES, INC.;  
22 OPTUMINSIGHT, INC.; UNITEDHEALTH  
23 GROUP, INC.; THE LEWIN GROUP, INC.;  
24 EVERNORTH HEALTH, INC.; EXPRESS  
25 SCRIPTS, INC.; EXPRESS SCRIPTS  
26 ADMINISTRATORS, LLC; ESI MAIL  
27 PHARMACY SERVICE, INC.; EXPRESS  
SCRIPTS PHARMACY, INC.; EXPRESS  
SCRIPTS SPECIALTY DISTRIBUTION  
SERVICES, INC.; MEDCO HEALTH  
SOLUTIONS, INC.; ELEVANCE HEALTH,  
INC.; CARELONRX, INC.; CARELON  
INSIGHTS, INC.; DOE ENTITIES 1-10.

Case No.: 2:24-cv-00493-RFB-DJA

**PLAINTIFF'S OPPOSITION TO  
EXPRESS SCRIPTS' MOTION FOR  
LEAVE TO FILE SUPPLEMENTAL  
AUTHORITY**

1 Plaintiff, the State of Nevada, by and through undersigned counsel, hereby submits its  
2 Opposition to Defendant Express Scripts' Motion for Leave to File Supplemental Authority  
3 pursuant to LR 7-2(g).

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 The State of Nevada requests that Express Scripts' Motion for Leave be denied as the  
7 motion is not supported by a showing of good cause. Under LR 7-2(g), “[a] party may not file  
8 supplemental pleadings, briefs, authorities, or evidence without leave of court granted for good  
9 cause.” To satisfy the good cause requirement under LR 7-2(g), the Court must find that the  
10 proposed supplement will make a substantive difference to what is pending before the court.  
11 *McAteer v. Sunflower Bank, N.A.*, No. 2:20-cv-02285-APG-EJY, 2024 U.S. Dist. LEXIS 41844,  
12 at \*1 (D. Nev. Mar. 11, 2024) (citations omitted).

13 Express Scripts seeks to submit an order issued by the U.S. District Court for the District  
14 of Hawaii; however, Express Scripts has failed to demonstrate that the proposed supplemental  
15 authority will make a substantive difference to the State's pending Motion to Remand. The  
16 authorities submitted in the parties' briefing currently before this Court adequately address the  
17 framework for analyzing the parties' arguments regarding the pending motion. The proposed  
18 supplemental authority is neither controlling nor factually relevant. Further, the proposed  
19 supplemental authority provides no new analysis of federal officer jurisdiction beyond what is  
20 already addressed in the parties' existing briefing.

21 **II. ARGUMENT**

22 The proposed supplemental authority is factually distinct from the case at hand. The  
23 Hawaii District Court's analysis of federal officer removal occurred in the context of the State of  
24 Hawaii's allegations that Pharmacy Benefit Managers artificially inflated the prices of  
25 prescription drugs through their negotiations with drug manufacturers. The District Court  
26 performed a detailed factual analysis of the defendants' negotiations with insulin manufacturers  
27 and defendants' factual representations regarding collective price negotiations. The Court  
28 determined that Caremark negotiated rebates collectively without separate contracts for FEHBA

1 plans and non-FEHBA plans. The determination of drug prices was regulated by the U.S. Office  
2 of Personnel Management through contracts with private carriers that contract with Caremark.  
3 The Hawaii court concluded that the conduct being challenged (i.e., the setting of prescription  
4 drug prices) occurred because of what Caremark was asked to do by the Government. The Court  
5 also found the “nexus” element of federal officer jurisdiction existed because the State of Hawaii  
6 was seeking to recover out of pocket costs associated with the PBM negotiations with  
7 pharmaceutical manufacturers.

8 In contrast, Nevada’s claims do not involve artificially inflated prices or out-of-pocket  
9 costs tied to federally negotiated prices. Instead, Nevada’s claims focus on the promotion of  
10 opioids and the implementation or non-implementation of utilization management tools in non-  
11 governmental contracts. Specifically, Nevada seeks abatement for the oversupply of opioids  
12 based on preferential formulary placement and lack of utilization management tools associated  
13 exclusively with Defendants’ non-governmental formularies. The issues before this Court are  
14 distinct and do not relate to the federal government’s regulation of drug prices or the collective  
15 negotiation of rebates, which were central to the Hawaii case.

16 Similarly, the court’s order concerning the validity of Hawaii’s disclaimer of federal  
17 claims involved a detailed factual analysis of the language in Hawaii’s disclaimer in relation to  
18 the claims asserted (violation of Hawai’i Revised Statutes 480). (Def. Motion for Leave, Ex. 1  
19 (Doc. No. 24) at p. 10-12). The Court determined that Hawaii had effectively waived its claims  
20 giving rise to federal defenses as to Express Scripts, and that Express Scripts’ removal was  
21 therefore improper. *Id.* The court’s conclusion was not merely due to Express Scripts’ failure to  
22 assert its work for FEHBP in that case; it was based on a detailed factual analysis of Hawaii’s  
23 specific allegations and the language of its disclaimers. *Id.*

24 In short, the analysis by the District of Hawaii is not relevant to this Court’s analysis of  
25 Nevada’s Motion to Remand. The Hawaii court’s decision was based on the specifics of Hawaii’s  
26 allegations about drug pricing and the associated federal regulatory context. This detailed factual  
27 inquiry does not translate to the issues in Nevada’s case. The circumstances of the opioid crisis  
28

1 and the role of PBMs in Nevada present different legal and factual questions, rendering the  
2 Hawaii decision inapplicable.

3 Further, The existing briefing pending before this Court already outlines the necessary  
4 legal standards and analyses. The Hawaii decision followed the same general framework but  
5 applied it to a distinct set of facts, making its reasoning unhelpful for the current case.

6 **III. CONCLUSION**

7 For these reasons, the proposed supplemental authority from the District of Hawaii will  
8 not make a substantive difference to the pending motion. The proposed supplemental authority  
9 does not provide a novel analytical framework for federal officer jurisdiction. The factual  
10 dissimilarities and lack of new legal insights make it irrelevant to the issues before this Court.  
11 Allowing supplementation for every district court decision that touches on related issues would  
12 set a precedent for endless supplemental filings, complicating and delaying judicial proceedings  
13 without substantive benefit. Therefore, the State respectfully requests that Express Scripts'  
14 Motion for Leave to File Supplemental Authority be denied.

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1 Alternatively, if the Court is inclined to grant the motion, the State requests leave to file a  
2 responsive brief to fully address the supplemental authority.

3 DATED this 31<sup>st</sup> day of May, 2024.

/s/ Robert T. Eglet  
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**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I hereby certify that I am an employee of EGLET ADAMS  
EGLET HAM HENRIOD, and on the 31<sup>st</sup> day of May, 2024, I did cause a true and correct copy  
of the foregoing document **PLAINTIFF'S OPPOSITION TO EXPRESS SCRIPTS'**  
**MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY** to be filed and served  
electronically via the Court's CM/ECF system.

*/s/ Jennifer Lopez*

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An Employee of EGLET ADAMS EGLET HAM HENRIOD

